IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Appeal No.715-SB of 1995

Date of Decision: April 02, 2007

Rajiv & another

...Appellants

VERSUS

The State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Rajbir Sehrawat, Advocate,
for the appellants.

Mr.Dilbag Singh, AAG, Haryana,
for the State.

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RANJIT SINGH, J.

This order will dispose of two Criminal Appeals No.715-SB of 1995 (Rajiv alias Raju & another v. The State of Haryana) and 720-SB of 1995 (Suneet v. The State of Haryana) as these arise out of the same judgment. The facts are being taken from Criminal Appeal No.715-SB of 1995.

Aggrieved against their conviction for offences under Sections 395/397 IPC and sentence of three years RI, coupled with fine of Rs.2000/-, appellant Rajiv alias Raju and Daya Chand have preferred this appeal.

Both the appellants alongwith Kadam Singh and Jai Bhagwan were charged and prosecuted for an offence under Section 395 read with Section 397 IPC. FIR No.267 dated 28.10.1990 was registered on the basis of a statement of Ram Niwas. As per the FIR, on 26.10.1990, Ram Niwas was working as a driver on truck No.HRO-9687, owned by Maha Singh Ex-Sarpanch of village Matanhale. After being hired for carrying grams from the village to Delhi, the truck had left for Delhi on the morning of 27.10.1990. Ram Niwas complainant and Dilawar Singh were the drivers of the truck, whereas one Mange Ram accompanied the truck as a cleaner. Rohtas, Mahinder and Surinder also travelled in the truck, being the persons, who had hired the same for carrying grams to Delhi. At Delhi, the grams were sold and sum of Rs.53,000/- collected by Rohtas and another sum of Rs.31,113/- collected by Mahinder Kumar as the sale prices of grams were kept in two plastic bags below the seat of the driver. They started the return journey at about 6 O'clock in the evening. The truck, however, suffered a break down at Bahadurgarh and was got repaired. When they reached near village Talao ahead of Jhajjar at about 1.00 A.M. on the night intervening 27/28.10.1990, a white Maruti Car without number plate, over took the truck and made the driver to stop it. Six youngmen came out of the car. One of them was carrying pistol kept his face muffled. Two others were armed with guns, whereas two were holding knives. Sixth person was carrying a hockey stick. Person carrying a pistol fired a shot hitting the left front tyre of the truck. Person armed with gun fired a shot on the wind screen of the truck. They had pulled the driver out of the truck and gave him beating.

Person carrying a knife brandished the same on Mange Ram, cleaner of the truck, sitting on the front portion. He also tore the shirt of Mange Ram with knife. A gun shot was fired by a person from the cleaner side, which hit Ram Niwas on his shoulder. Two other shots were fired by the person holding the gun, which hit Surinder at his back on the left arm. Fearing further assault, driver Dilawar Singh etc. disclosed the hidden money lying under the driver seat, which the assailants took away with them and then left the place in their Maruti Car. The truck was taken to a village slowly where the tyre was changed. The injured were taken to Jhajjar hospital. Incident was reported leading to registration of the FIR. The police came into action and conducted necessary investigation picking up clues from the spot, but the culprits could not be traced despite the fact that the occupants of the truck and the complainant claimed that they were in a position to identify all the assailants.

On 9.7.1991, Daya Chand was arrested at Delhi. He was found carrying a country made pistol and a live cartridge. During his interrogation, he disclosed before Inspector Prithvi Singh that he had taken part in commission of the offence, afore-mentioned. He only disclosed the names of his other companions, who had participated in commission of dacoity. His statement was accordingly recorded, but no recovery could be effected by Delhi Police. This, however, led to the arrest of Rajiv Rana, Suneet Kumar and Kadam Singh. The information was transmitted to CIA Staff Rohtak on 12.7.1991. Dhan Singh SI, CIA Staff accordingly went to Tis Hazari Court and arrested Rajiv, Kadam Singh and Suneet, who were produced before the court on the said date. These three persons had allegedly made a

disclosure statement before Dhan Singh SI leading to recovery of sum of Rs.15, 000/- concealed in an almirah being in the exclusive knowledge of Rajiv. Similarly, Kadam Singh got recovered a sum of Rs.15,000/- from northern corner of his residential house in village Gamari and Suneet Kumar a sum of Rs.4000/- kept concealed in an almirah being in his exclusive knowledge. Recovery memos in regard to the sums got recovered were accordingly prepared and the same were taken in possession. Daya Chand was produced in the court on 24.7.1991 and he was accordingly arrested with the permission of the court at Delhi. He also made a disclosure statement revealing that he had kept concealed a sum of Rs.25,000/- being in his exclusive knowledge in the first floor of his house at village Libaspur. He got recovered a sum of Rs.22,000/- from a place pointed by him, which was taken in possession. In addition, he also got a Car No.DNB-2598 recovered, which was kept concealed in the house of Satish Bhatia, resident of Tilak Nagar, Delhi. Jai Bhagwan, the 5th accused, was produced before the SI by one Hari Singh. He also made a disclosure statement leading to recovery of a sum of Rs.15,000/- on 6.8.1991. On 25.7.1991, Daya Chand was produced before Shri T.V.S.Parasad, Sub-Divisional Magistrate, Jhajjar with the muffled face for the purpose of getting a test identification parade conducted. He, however, refused to join the test identification parade. After completing the necessary formalities, all these persons were charged and put up for trial.

Prosecution examined sixteen witnesses in support of its case, which included the doctors, eye-witnesses and the police officials conducting the investigations. The appellants alongwith their

co-accused, however, pleaded false implication and also made allegation of demand of money by police conducting the investigation into this case. It was pleaded that the amount was paid to the police officials on demand, part of which was shown as having been recovered. It is further stated that the appellants and their co-accused were shown to the witnesses and as such they were justified in refusing to undergo the test identification parade. In support of their case, they also examined defence witnesses, who were Clerk from the Syndicate Bank at Delhi, mother of accused Rajiv, brother of accused Daya Chand and father of accused Jai Bhagwan etc.

The trial court, after analysing the prosecution evidence and the stand of the defence, found that the prosecution was unable to prove its case against Kadam Singh and Jai Bhagwan, but found the appellants guilty of the charge and sentenced them, as already noticed.

The counsel for the appellants submits that the prosecution was unable to bring home the guilt of the appellants on the basis of reliable and cogent evidence. By referring to the manner in which the case was un-earthed, the counsel would say that it would be un-safe to up-hold the conviction of the appellants. State counsel, on the other hand, by making reference to the evidence of the prosecution would say that the guilt of the appellants stood established by sufficient evidence.

It cannot be disputed that the incident, as mentioned, had taken place. It cannot be termed as a case of false implication or involvement. It is on record that two of the prosecution witnesses

were injured by a fire arm and hence it would be safe to say that the incident of dacoity had taken place. Otherwise also, no reason could be shown for false implication of the appellants. While registering the FIR in this case, the injured-complainant had himself given description of the persons involved in the incident and had also maintained that he and other witnesses would be in a position to identify the assailants, who had committed dacoity. In fact the prosecution had arranged to conduct a test identification parade for one of the accused, but he refused and evidence in this regard has accordingly been led before the trial court. The injured and other prosecution witnesses, who had witnessed the scene, were examined before the court and they identified the present appellants while giving their evidence. Ram Niwas complainant, however, did not identify Kadam Singh and Jai Bhagwan as the persons accompanying the assailants, who committed dacoity. Otherwise Rohtas (PW-5) had identified Suneet and Rajiv, who were holding guns and Daya Chand was identified as the one, who was armed with a revolver. During cross-examination of the witnesses by the counsel for accused Jai Bhagwan and Kadam Singh, the witnesses clearly stated that they were not present amongst the assailants at the time of incident. Remaining accused were identified by these two witnesses as well as Surinder (PW-6), who again did not identify Kadam Singh and Jai Bhagwan to be present at the spot at the time of incident. Similar is the state of evidence of Mange Ram (PW-7) and Mohinder (PW-10). The trial court was fully justified in acquitting Kadam Singh and Jai Bhagwan as the prosecution witnesses deposed in unison that these two persons were not accompanying

the assailants at the time of incident. On the other hand, all these witnesses had specifically identified the remaining assailants to be Rajiv, Suneet and Daya Chand. In fact this conduct of witnesses would be a sufficient assurance to say that they had come out with the truthful account of the events and had not resorted to any false involvement or padding that may have been resorted to by the police during investigation. Nothing much would depend upon the assertion made on behalf of the appellants that their identification in the court for the first time would be valueless, specially when viewed in the background that the accused-appellant Daya Chand had refused to participate in the test identification parade. It can also be noticed that the appellants were present at the scene for a sufficiently long period, which could have given enough opportunity to the witnesses to see them and be in a position to identify them at a later date as has been done in this case. No other basis is urged before me to find fault with the findings returned by the trial court. The appellants were rightly held guilty of an offence under Section 394 read with Section 34 IPC and have properly been excused of culpability under Section 397 IPC being less than five in number as Jai Bhagwan and Kadam Singh were acquitted. No infirmity, as such, is noticed in the findings recorded by the trial court.

Faced with this situation, the counsel for the appellants pleaded for leniency mainly on the ground that the proceedings against the appellants are pending since 1990 and as such they have faced proceedings for the last seventeen years. He would further submit that the appellants are on bail since the year 1995 ever since the date of their conviction, which they have not misused in any

manner.

The allegations against the appellants are quite serious where they have not only committed dacoity, but had injured the victims as well. Apparently no case for leniency appears to be made out specially when viewed in the background that they have already been dealt with lightly. However, considering the fact that the present proceedings against the appellants are pending for a considerably long period, I am inclined to remit part of the sentence awarded to the appellants. Accordingly, while dismissing the appeals, I would reduce the sentence by one year directing the appellants to undergo RI for two years coupled with fine of Rs.2000/-, as already awarded. They would also undergo two months RI in case of default of payment of fine. They will surrender before the Chief Judicial Magistrate, Rohtak immediately for undergoing the remaining portion of the sentence.

April 02, 2007 (RANJIT SINGH)
ramesh JUDGE